



Review of the Legal Services Market
An assessment of the implementation and impact of
the CMA's market study recommendations
Law Society Response to the Call for Inputs
September 2020



Review of the Legal Services Market Assessment

A response from the Law Society of England and Wales

I. Introduction

1. The Law Society welcomes the opportunity to respond to Call for Inputs by the Competition and Markets Authority (CMA). In making this response, the Law Society is acting in its representative capacity as the professional membership body for solicitors. We previously responded to the CMA's 2016 Market Study.
2. The legal services market has experienced significant changes since 2016, including substantive regulatory reform, innovation in both legal service providers' business models and in the way in which legal services are provided, particularly in the field of LawTech, and the recent major changes for supply and demand (both positive and negative) that have come about as a result of COVID-19.

Substantive regulatory reforms since 2016

3. Since the CMA's 2016 market study, much work has also been undertaken by the Legal Services Board (LSB), Solicitors Regulation Authority (SRA) and other frontline legal regulators to make the current framework more flexible and proportionate. The [SRA Standards and Regulations](#) (STaRS) heralded substantive reforms, introducing more flexibility to the way solicitors can practise, allowing solicitors to work as freelancers and in unregulated entities. Additionally, the prescription in the solicitor's handbook was stripped-down, with much detail being moved to separate guidance.
4. The STaRS changes were intended to give solicitors more flexibility in the way they run their business and, with certain business models, to reduce their operational cost by removing some of the regulatory requirements (e.g. professional indemnity insurance), which in turn was expected to lower costs and increase choice for consumers.
5. The freelance model of practice allows solicitors to practise on their own, without the need to be authorised as a recognised sole practice or to work through a regulated firm. The SRA thought this change would enable solicitors to work on their own, or to operate on the same model as barristers, attached to chambers and sharing back-office functions, but working as self-employed individuals.
6. Freelance solicitors are not required to maintain the same high levels of client protections that are expected of solicitors working for authorised law firms. The extent of the protections that they are obliged to secure will vary depending on whether a self-employed solicitor is doing reserved or non-reserved work. For example, freelancers doing reserved work must hold 'adequate and appropriate' insurance which, as a practical matter, is likely to be at a lower level than the mandatory PII imposed on sole practitioners and law firms. Freelance solicitors conducting non-reserved work only are not required to hold any insurance.
7. There has been an increased interest from the profession in working as freelance solicitors and as consultants. There are also a growing number of 'lawyers on demand' platforms tapping into the demand for interim legal talent. The pandemic is likely to increase this trend since many firms are looking to cut costs and increase business agility to better cope with market volatility and rapidly changing client needs.

8. In addition, in July this year, the new Internal Governance Rules (IGRs) came into force, which increase the independence of regulators from professional bodies. The Solicitors Qualifying Exam (SQE), due to be introduced in September 2021, will bring more change to the sector.
9. Going back to 2007, the legal framework has of course also encouraged alternative business models with non-lawyers' ownership and investment, known as Alternative Business Structures (ABS). The number of ABSs is steadily growing, with 1413 ABSs in operation recorded this year. In 2019, ABSs accounted for 8.5% of all solicitor firms. ABSs make up approximately 18% of the turnover of all law firms, amounting close to £5 billion and employing around 19% of PC holders. The emergence of ABSs has led to a greater variety and diversity of suppliers in the legal marketplace. The Covid-19 crisis may further stimulate ABS growth, since some financially stressed law firms may seek business investment from non-lawyers.
10. The transparency remedies must be viewed within the wider context of the significant regulatory reforms the profession has experienced in particular since 2016.

Innovation in service delivery

11. Since the CMA report was published in 2016, there has been significant legal services innovation as a result of the development and adoption of legal technology. Our research on the adoption of LawTech¹ found:
 - The business-to-business market is the most mature, particularly within large law firms, having achieved common adoption of AI and machine learning driven applications. Some of the most important growth areas of LawTech include legal analytics, legal project management, governance and compliance and contract management. Some of the more established areas include collaboration tools, document management, IP management and e-billing.
 - The business-to-consumer legal market has also adopted legal technology, but at a slower pace than the business to consumer market. There is most traction in those law firms that deliver large-scale commoditised services, where automation is used to drive efficiencies. For instance, chatbots and triage tools are all becoming more common with a greater focus on the consumer experience.
12. This has been coupled with a significant increase of LawTech products and services in the market (the [TR legal tech report](#) suggests that there are over 250 LawTech start-ups (110 with a UK headquarters and 143 with an EU Headquarters) sponsored by incubators and accelerators such as the Law Society and Barclays LawTech lab. Government support has also encouraged the sector to grow. Since 2018, there has been public investment of £11.2 million for LawTech which led to the creation of LawTech UK. The number of start-ups tracked by TR and Legal Geek has tripled since 2017.
13. Most current LawTech products are aimed at assisting back-office processes, products and models, with e-Discovery and legal research being the most popular ones followed by contract management tools. These aim to make services more affordable for clients, but can also assist non-profit organisations to make their operations more accessible and efficient (indirectly by reducing costs or saving time). Significantly, the entrance of new providers into the legal space has led to the emergence of 'hybrid providers', where a law

¹ TLS conducted in-depth interviews with a range of firms, sole practitioners and LawTech providers regarding the adoption of technology in the legal services sector. We plan to release a literature review, summarising regulatory positions nationally and internationally on if and how LawTech should be governed, and a LawTech and Ethics Discussion Paper to engage with a wider segment of our membership.

firm may create an ABS or LawTech product, or a LawTech provider or ABS may create a law firm to capture market share or raise external investment.

14. The drivers of innovation included the need for greater efficiency; increasing workloads and complexity of work; the changing demographic mix of lawyers and client pressure on costs and speed. Covid-19 is now a significant additional driver.
15. The adoption of LawTech has required lawyers to work closely with other disciplines. [Oxford University published a report](#) early this year analysing the impact of innovation and adoption on future training requirements of solicitors in England and Wales. They found LawTech training varied between organisations and levels of expertise, with more associates and assistants likely to receive training. The report identifies an emerging trend of multi-disciplinary teams (MDT), solicitors working with non-legal experts like data scientists and project management. The liberalisation of the legal services market, subsequent flexibility for the profession, has enabled this collaboration.

The effects of the pandemic

16. Covid-19 has caused a demand shock, and the sector response has been one of rapid innovation, decreased profits, and some exit. This is consistent with a market that is broadly competitive and consumer-focused.
17. The pandemic has driven an acceleration of what were already existing trends, and a growing focus on digitisation, process automation and remote working capabilities. What was once a 'nice to have' has become a critical part of maintaining business continuity.
18. We were inundated with examples of solicitors finding practical solutions to challenges of providing legal services during lockdown. The Law Society worked with relevant authorities on behalf of the profession to adapt or clarify the rules at speed to provide for the new ways of working which became necessary to serve clients remotely. For example, the Land Registry confirmed that it would accept Mercury signatures, the MoJ and SRA agreed that our practical suggestions on virtual execution for commercial transactions were appropriate given the constraints in existing legislation, the Ministry of Justice announced that video witnessing of wills would be valid for a temporary period and the Legal Aid Agency changed those rules which were incompatible with social distancing.
19. As remote working required more firms to use technology to reach and assist clients, levels of adoption of certain applications of LawTech increased. For example, electronic signature platforms have become mainstream in corporate and real estate deals.
20. It is also becoming clear that those operating in either B2C, B2B, or in advice sectors as ABS, LawTech Provider, or traditional legal services providers who adopt enhanced capabilities through technology and innovation, are more readily able to offer legal advice and provide legal services.
21. There is anecdotal evidence that firms are looking at the implications of new ways of working for their costs, pricing and the markets (for example, geographic) they are able to access.
22. Covid-19 has therefore demonstrated to an extent that the new regulatory framework for solicitors provides sufficient flexibility for practitioners to adapt, whilst maintaining protections for the public and continuing to allow innovation.

23. Courts also responded positively to the pandemic. We reported that since lockdown began, 85% of national and international business disputes in the business and property courts were being concluded remotely using technology.²
24. Commercial court users have reported almost no backlog of cases and that the courts continue to have similar levels of business to previous years.
25. In both the short and long-term, there are significant economic challenges ahead for the legal services market in light of the Covid-19 pandemic. We are concerned about the likely impact on the funding of the justice system and members' businesses and livelihoods.
26. The vast majority of law firms and practitioners, of all shapes and sizes, have been deeply affected. Most firms have experienced a significant drop in income and cash flow problems as a result of the crisis. Many firms have furloughed staff, reduced working hours and implemented pay cuts, and frozen all but essential recruitment while encouraging unpaid leave and sabbaticals. We are also seeing redundancies.
27. High street law firms in particular have been significantly impacted. Our research showed that 71% of small firms feared that these issues could force their closure within 6 months³, if they were unable to secure further financial support. This is extremely worrying as high street law firms play a vital role in supporting local economies across the country, providing employment, supporting other businesses by facilitating commercial transactions or providing essential legal services to vulnerable people.
28. Although technology and digitalisation increase the accessibility, efficiency and effectiveness of the legal services sector, they often create tension with a lawyers' duties and obligations. Although the absence of regulation has provided the legal services market with the flexibility and speed to respond to the pandemic by developing or adopting technology and innovating, the lack of supplementary guidance or best practice has meant smaller businesses, ABS', LawTech producers and the Advice sector have sometimes been adopting technologies without completely understanding either the capabilities of the tool or regulatory requirements. This makes it difficult for individual firms to assess whether a technology could cross a regulatory line.

Consumers are broadly happy with legal sector's services

29. The Legal Needs Survey (2020)⁴ demonstrates that consumers are happy with the quality and value of legal services, with the vast majority of people (85%) being satisfied with the legal service they received and the value for money offered. People are most satisfied with the service they receive from solicitors (90%) and other professional advisers (88%). 84% of people using solicitors also thought they provided value for money.
30. This reflects the recent Legal Services Consumer Panel tracker survey (2020)⁵ that shows that 74% of consumers feel they have a wide range of choice when choosing a provider, continuing an upward trend since 2016 (68%), with 64% saying the overall service and advice provided was good value for money.

² <https://www.lawsociety.org.uk/campaigns/england-and-wales-global-legal-centre/england-and-wales-during-covid-19>

³ The Law Society member survey 2020

⁴ [The Legal Needs Survey](#), conducted for the Law Society and the Legal Services Board by YouGov published January 2020 which collected data between February and March 2019 from 28,663 people

⁵ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/LSCP-2020-How-consumers-are-choosing-August-2020-1.pdf>

31. The remainder of this submission addresses, in turn, the CMA's two main areas of focus and the specific questions posed in relation to each:

- The ability of consumers to drive effective competition through making informed purchasing decisions
- The impact of existing redress mechanisms and regulation, and of the regulatory framework, on consumer protection and competition.

II. The ability of consumers to drive effective competition through making informed purchasing decisions

32. Consumers' ability to make informed purchasing decisions has been aided by the SRA's approach to implementing the remedies, and the responsiveness of the sector in complying with the new rules.

SRA implementation of the transparency remedies

33. The SRA has adopted a sensible and proportionate approach to implementing the transparency remedies. It was the right decision to select only a subset of practice areas. Different practice areas vary in terms of how easy they are to price in advance, so a 'one-size-fits-all' approach would not have been appropriate.

34. The SRA was right to take some time in implementing the changes following the CMA's 2016 market study to ensure the right measures were implemented. Conducting its own consultation exercise to constructively engage with the profession and other relevant stakeholders was appropriate given the significance of the changes. The SRA has implemented a measured approach to monitoring compliance supporting firms to get implementation right for the benefit of consumers, bearing in mind that the profession has also been focused on the severe effects of the pandemic over the past 6 months.

35. The results of our qualitative research⁶ with the profession indicates that firms often had no problems with the technical side of providing the information online and agreed that the practice areas included were broadly correct. Firms also broadly had no concerns about publishing their prices online, recognising that rival firms will be able to look these up, but this plays its part in driving a competitive market.

Sector compliance with the transparency remedies

36. The SRA's web sweeps and follow up work on compliance indicate that firms have broadly complied with the new Rules. (The 'partially compliant' firms in the SRA's 2019 web sweep included some which had substantially complied, omitting only minor details.)

37. The Law Society has provided significant support to the profession on the remedies, including a range of tools to assist the profession's transition to the new Rules, including a [Transparency Tool Kit](#) and a detailed [practice note](#).

Impacts of the transparency remedies

⁶ Qualitative research in the form of six online roundtable discussions held in August and September with a range of members from firms of different sizes. These were attended by around 70 members in total, including many Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance Administration (COFAs)

38. With regard to consumers' abilities to make informed purchasing decisions, there have been some encouraging results following implementation of the SRA Transparency Rules 2018. Here we refer to some positive effects noted by members in the focus groups facilitated by the Law Society this autumn, to which we will refer in more detail later. We also refer to the encouraging headlines from the SRA's recently conducted research.

III. The impact of existing redress mechanisms and regulation, and of the regulatory framework, on consumer protection and competition

39. As mentioned above, the level of consumer engagement with the price transparency pages indicated by the research conducted by the SRA is encouraging.

40. The SRA's research showed that 68% of the consumers who accessed legal services in the last 18 months have looked at prices made available by firms. The corresponding figure for SMEs accessing legal services was 56%. These figures appear to indicate that consumers are constructively engaging with information made available to them pursuant to the reforms, although we do not have data from before as prices were less readily available on websites.

41. The SRA's research also shows that 83% of consumers and 85% of SMEs strongly agree that they had all the information they needed to make a good choice. This suggests that the remedies are starting to play a role in helping consumers make more informed choices.

42. The level of engagement needs to be seen in the context of the measures still bedding in and the fact that there has been no major public legal education campaign to raise awareness of the remedies.

43. The SRA's research also indicates that experience and reputation are two of the most important factors for consumers when choosing legal services providers, and that consumers have not become overly focused on price as a result of the remedies.

44. In addition to the SRA's research, and as referenced above, we have been conducting our own qualitative research with the sector.⁷

45. The response from our members in relation to the remedies introduced has been more mixed. Members identified some benefits from displaying their prices online. For example, firms have indicated the exercise of providing pricing information has been a useful one in prompting them to take a more holistic approach to their pricing structure. Others indicated that the exercise of displaying prices has assisted support staff in firms in their understanding of the complexity of the pricing structure that is being used. This greater understanding and knowledge is having a positive consequent effect when the support staff talk to clients, helping to highlight to support team members that they are also a necessary element in the legal transaction, as well as the fee earners.

46. We would therefore suggest that in addition to affecting consumer behaviour, the remedies may be starting to change firm behaviour directly, in ways that are likely to benefit consumers.

47. We envisage the cumulative effect of all of the above changes on law firms and clients is likely to be something that can only be properly analysed further down the road.

⁷ Six online roundtable discussions held in August and September with a range of members from firms of different sizes. These were attended by around 70 members in total, including many Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance Administration (COFAs).

48. We are also aware the SRA and LSB will keep the remedies under review to better understand their impact over time and we are committed to working with them to do this.
49. We would note our concern about the economic impact of regular regulatory change, which in turn can have a knock-on effect on clients who may bear the cost of regulatory compliance.

Reforms that have reduced regulatory burdens

50. As explained in more detail above in paras 3-10, in recent years the SRA has carried out a substantial programme of reform to the solicitor's handbook, which led to the introduction of the new SRA Standards and Regulations in November last year.
51. The reforms aimed to simplify regulations for solicitors, make them more targeted and future-proofed, and offer solicitors more flexibility and freedom in the way they choose to practise. In addition to the two shorter, less detailed codes – a Code for Solicitors and a Code for Firms, the new rules brought in simplified Account Rules, and a widening of the practising address for law firms and sole practitioners, beyond England and Wales to the UK. This change could benefit solicitors and firms from Scotland and Northern Ireland that will no longer need to register in England and Wales, potentially reducing their operational cost.
52. The SRA continues its programme of reform with further changes to the Compensation Fund and solicitor's education and training, with the new Solicitors Qualification Exam (SQE) due to be implemented in September 2021.

Reforms to enhance the independence of the SRA

53. In July, the new Internal Governance Rules (IGRs) came into force, which has increased the independence of regulators from professional bodies. The extent of the former oversight function performed by approved regulators has now been limited to a residual assurance role and the IGRs prescribe that regulatory bodies must be given regulatory autonomy over a number of key areas including governance, structure, regulatory priorities, strategy, budget, and the appointment, termination and performance of their Boards. While an approved regulator is still permitted to seek to influence the work of a regulatory body in exercising the approved regulator's representative functions, it may not prejudice the independence of the regulatory body. In our view these new requirements significantly enhance the separation and independence of regulatory functions within the current legislative framework.
54. In addition to this, the SRA is being established as a discrete independent legal entity within the Law Society Group. The new arrangement has created more transparency for the profession and public about the Law Society and SRA's distinctive roles and responsibilities. The LSB is also currently considering a possible review of reserved activities to address potential gaps in consumer protection.

Summary of any other steps taken in response to the CMA's Theme 2 and 3 recommendations

55. Following the CMA's recommendation to consider a wider review of the wider regulatory framework, the Government asked the LSB to make improvements within the current framework. These included measures to increase regulatory independence (IGRs changes) and enhance information remedies, which the Law Society supports.

56. Given the current climate and the most recent SRA regulatory overhaul, further legislative reform is presently unnecessary and would be unwelcome. Improvements can be made within the scope of the current framework and we therefore welcome the fact the Government has indicated it has no plans at present to review the Legal Services Act. We also note that Professor Mayson's Independent Review of Legal Services Regulation (IRLSR) does not advocate for immediate major reform, acknowledging that timing needs to be right for the long-term solutions set out in the report.
57. With regard to considering redress provisions in relation to unauthorised providers, the IRLSR report proposes some short-term measures to address regulatory gaps in relation to unauthorised providers. However, given that legal services are wide in scope, with different levels of risks, prior to considering concrete solutions, there needs to be a robust review of unauthorised providers, to better understand and establish who the providers are, what specific legal services they provide, what are the concrete consumer risks and the level of consumer harm. Such a review is necessary before the need for and appropriateness of proposed remedies can be assessed. Extending access to redress alone is unlikely to resolve the underlying problems that a lack of regulation causes, in particular for high-risk areas (e.g. wills, probate, lasting power of attorney) where an ex ante protection would be required alongside redress.
58. The CMA recommended gathering more evidence on unauthorised providers in the legal sector⁸, and we are supportive of this proposal, yet we are not aware that any such data has been collected in a comprehensive way. The LSB is considering a review of reserved activities which could provide an opportunity to collect more robust insight on unauthorised providers, and better inform any regulatory interventions.
59. If a review of the unregulated sector takes place and concludes that there is compelling evidence of consumer harm from the unregulated sector, consideration should be given to bringing within the scope of regulation some of the non-reserved activities and unauthorised businesses. However, these need to be proportionate, targeted and risk-based. We would be concerned if, on the one hand, overregulation led to rising cost of legal services and reducing access to justice, and, on the other, insufficient regulation resulted in further consumer confusion, causing consumer harm. Before any change is considered, there must be an assessment of the impact of regulatory reform on the sector as a whole, in order to avoid any unintended consequences, bearing in mind the Competition and Markets Authority's warning: "We appreciate that a wholesale reform of the regulatory framework may be risky and that the detail of any alternative model will be important."⁹

A summary of the Law Society's overall position

60. It is important to say at the outset, that given the pivotal role of the rule of law in the economy and the whole of society, any agreed measures should not only focus on competition outcomes, but also on the need to safeguard other regulatory objectives under the Legal Services Act¹⁰.
61. As highlighted above, there are some indications of positive outcomes from the transparency measures that have been introduced, which suggests that the transparency remedies are beginning to drive improved outcomes for consumers.

⁸ CMA legal services market study report, December 2016, para 48, p. 16.

⁹ Ibid, p. 213.

¹⁰ <https://www.legislation.gov.uk/ukpga/2007/29/contents>

62. However, it is still relatively early days, particularly considering the significant disturbance caused by Covid-19 which brought conveyancing work (one of the practice areas caught by the remedies) to an effective standstill for many months during this period. As such, it is difficult to draw firm conclusions and it is likely further time is necessary for things to fully bed in. Overall, the direction of travel appears to be positive.
63. The Covid-19 pandemic has demonstrated that the current regulatory framework is resilient and provides sufficient flexibility to adapt to novel situations whilst protecting the public, facilitating regulatory oversight and compliance, and allowing innovation.
64. Prior to considering further measures, work needs to be undertaken to identify specific problems the measures would seek to address, with targeted, tailored and workable solutions being developed that would minimise unintended consequences. However, any measures considered should be light touch, without making changes to the Legal Services Act 2007.
65. Given significant short and long-term economic challenges ahead for the legal services market in light of the Covid-19 pandemic, the UK's withdrawal from the European Union and the lack of proper legal aid funding, the priority should be on ensuring confidence and stability, rather than further regulatory changes.
66. Overall, the Society would caution against further modifications in order to take time to fully evaluate the impact of all of the changes made in the context of this rapidly evolving market place and to analyse the nature and extent of any risks posed by perceived gaps in regulation. The early results are promising, but we would counsel against moving too quickly to make further changes.
67. We would urge the CMA instead to encourage legal regulators to continue to refine the measures over time in consultation with industry and other stakeholders, and as the evidence base grows.

Question 1: What challenges have legal service providers faced in complying with transparency measures, and how could these be addressed?

68. The legal sector takes its regulatory requirements very seriously and the profession, supported by both the SRA and the Law Society, have put significant efforts into complying with the price transparency rules. Research from the SRA suggests that levels of compliance have been high.

69. Since the regulations have been implemented, we have conducted qualitative research with our members¹¹ to better understand the challenges that members have faced. We found the following:

- Firms found some elements of the rules confusing. For example, what 'prominent' means in terms of where the information should be placed on the website, and how many clicks it should take to land on the relevant page.
- Prices provided often include assumptions which may not apply in individual cases. Working out the final costs without certain information can be problematic.
- The consumer will usually not be aware of how different costs arise, or of the impact of referral fees. One of the challenges is how price transparency factors in referral fees, including introduction fees paid to estate agents.
- Regional offices in different areas may have differing rates depending on location. Putting together prices across these geographic areas can present a challenge.
- Firms taking work from a panel referrer who takes a cut leading to higher prices for the consumer can find it difficult to explain the difference in price from that advertised on the website.
- Firms had not noticed any increase in traffic to their websites in general.
- Members reported that despite the information being made available online, clients will typically still telephone or email the firm for a quote.

70. In addition to the above, when we spoke with conveyancing practitioners in our research¹², we found the following:

- There are many different ways in which firms can calculate and display information. It is possible to quote prices without additional items that should be included to present a complete picture. A lack of specificity as to how costs should be laid out makes comparison difficult.
- Some consumers will not appreciate how price differentials arise, for differences caused by whether a property is freehold, leasehold or new build.
- Prices may be subject to change when the complexity of a transaction becomes apparent.

71. As noted above, the Law Society has provided substantive support to the profession in order to support its compliance with the rules. It is our intention to use both our qualitative research and the SRA's research to help refine and disseminate support for members and address any gaps or issues that have been identified in the support available.

Question 2: Are consumers engaging with the new transparency measures including the availability of price information, e.g. by accessing the pricing

¹¹ Six online roundtable discussions held in August and September with a range of members from firms of different sizes. These were attended by around 70 members in total, including many Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance Administration (COFAs).

¹² Ibid.

information on the provider websites and/or using this information in their interactions with providers? Does this differ between different areas of law?

72. As we highlighted in para 40, the research carried out by the SRA demonstrates that consumers are engaging with the price transparency measures with 68% of consumers and 56% of SMEs actively looking at prices.

73. However, impacts are likely to vary practice area-by-practice area. We understand that the SRA's recent research may include more granular evidence to explore whether consumer engagement is higher/lower in particular practice areas.

Question 3: How effective have transparency measures been in driving competition? Does this differ across areas of law?

74. As discussed in paras 60-67, it is likely to be too early to conclusively determine how effective the transparency measures have been in driving competition - whether in general or for specific practice areas. The research conducted by the SRA is encouraging and indicates the overall direction of travel is a positive one. However, given the significant disruption caused by Covid-19 over the last 6 months it would be challenging to draw any definitive conclusions.

Question 4: To what extent has the Legal Choices website helped consumers to navigate the legal services sector? To what extent has improved content been actively promoted by regulators, consumer/industry bodies and service providers?

75. The Legal Choices website is run by the SRA and they are, therefore, in the best position to respond to this question. The Law Society runs the Find a Solicitor Service¹³, a free service for anyone looking for information about organisations or people providing legal services in England and Wales that are regulated by the Solicitors Regulation Authority (SRA). Find a Solicitor takes data held by the SRA, which we adapt and add additional information to, and present through an easy-to-use search.

Question 5: To what extent are quality indicators needed to drive consumer engagement and competition? Which further indicators are needed and what are the barriers to these indicators being developed?

Question 6: To what extent are DCTs currently operating in the legal services market? What are the main barriers to greater use of DCTs in legal services and how can they be overcome?

76. We will respond to Questions 5 and 6 together as the topics overlap.

Quality indicators and Consumer satisfaction with legal services

77. With regard to DCTs and quality indicators, there are already a range of quality marks that exist for consumers including our own accreditations. Figure 1 below from the 2010 Consumer Panel report maps the various quality marks which could be updated for practice areas under consideration. We also know from the latest legal needs survey (Figure 35, below) that overall consumers find it easy to search for reviews and obtain details of services.

¹³ <https://solicitors.lawsociety.org.uk/about>

78. One of the ways the Law Society helps drive up standards in the profession and demonstrate quality to consumers is through the firm accreditations we offer to legal practices which meet the highest standards of technical expertise and client service in specific areas of law. The firm accreditations are drivers of quality in service, excellence in client care and practice management. The accreditations provide the assurance to clients that the firm has reached the requisite standards to be accredited. The accreditations are recognised by stakeholders as indicators of quality and risk management and provide assurance to clients that the firm has met the quality indicators for accreditations. As the accreditations are recognised quality standards, both accreditations have ongoing training obligations. Both Lexcel and CQS have annual assessment requirements which ensure that standards are maintained.
79. The Law Society has not undertaken significant research into DCTs. The main websites that we are aware of are:
- [JustBeagle](#) which enables consumers to browse and compare Fixed Fee legal services. It also contains details for over 10,000 law firms. JustBeagle operates in conjunction with LegalBeagles a legal discussion forum.
 - [TheLawSuperstore](#), which advertises itself as the UK's first comparison website for legal services, and [RatedSolicitors](#) which brings together a range of legal professionals who have all agreed to let their clients share their experiences.
 - [Conveyancing Prices](#)
 - [Conveyancing Index](#)
 - [Conveyancing Quotes](#)
 - [Conveyancing Quote Now](#)
80. More work needs to be undertaken to determine the level of consumer engagement with quality indicators / DCTs that currently exist, but usage is still relatively low, and plans or expansion seem limited.
81. Furthermore, identifying meaningful quality indicators for consumers within the legal sector presents challenges for the following reasons:
- There is an inherent difficulty for consumers judging the quality of legal advice compared to other markets, for example judging the quality of hotels or other travel services.
 - The quality or otherwise of legal services delivered may only become apparent some time or even years after the service has been provided.
 - Consumers may find it difficult to distinguish between the quality of service delivered and the quality of the legal advice.
 - Certain practice areas may present particular challenges when attempting to use consumer views to generate quality indicators. For instance, criminal defence services often attract unwarranted complaints of poor quality by defendants following convictions.
82. With regard to differentiating between indicators of service quality and quality of legal advice, greater availability of indicators on both helps to improve consumer engagement and competition to some degree – allowing consumers to access and assess a richer set of information rather than focusing on prices, for instance. There was a fear that transparency rules might engender a bias towards price given their prominence in the rules.
83. Consumers may struggle to judge the quality of legal advice, and indicators in this area that involve peer review are costly and time consuming to develop. The regulatory system and minimum entry standards should provide assurance around quality of legal advice, so

improving awareness of these amongst consumers will be likely to be a more cost-effective solution than developing indicators of the quality of advice at the firm level.

Figure 1 – Quality assurance in legal services

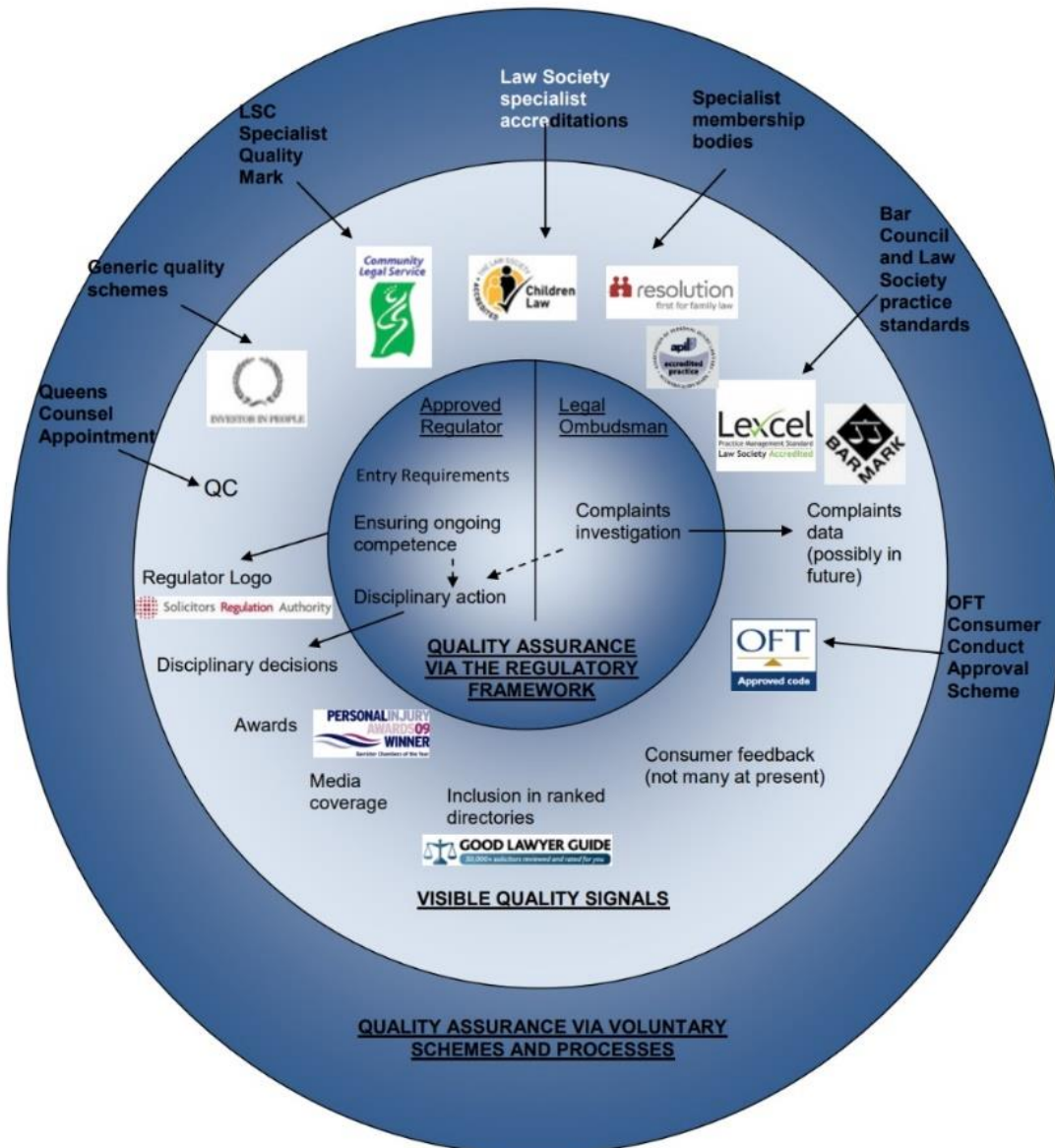


Figure 35. Proportion of people rating it easy or difficult in searching or obtaining information to help choose a main adviser when handling a contentious or non-contentious legal issue



Base: all adults who did each of the following when handling a contentious or non-contentious legal issue, search for services (n=2,085), search for prices (n=1,008), search for reviews (n=1,008), ask for suggestions where to go (n=619), obtain prices (n=1,207), obtain details of services (n=1,564)

Reputation of provider

84. We know from the Legal Needs Survey and consumer panel research that consumers rely heavily on reputation and recommendations when assessing quality of service.¹⁴ For those with a contentious legal issue, 32% did not compare across more than one service provider because they trusted the recommendation they were given (27% for a non-contentious legal issue). Online comparison tools may complement these as 3% of people use cost comparison websites when choosing a main adviser. However, barriers to their development are due to the fact that consumers' assessment of service quality can be influenced by the legal outcome – which could be resolved to an extent if there were some uniformly acknowledged aspects of service quality (e.g. response times, quality of communication). There may also be scope for accreditations and other kite marks to play a greater role in communicating various aspects of service quality.

Defining and mandating quality indicators

85. It is important to understand how quality indicators can be best defined. An important part of this formulation is whether the provider of legal services is regulated or not. For this reason we welcomed the introduction of the digital badge by the SRA in December 2018.¹⁵ Interlinked with this is the recognition of the solicitor brand as a mark of quality. Given low levels of consumer awareness of the regulatory status of legal services providers, the badge informs consumers that they are using a regulated provider and also links them to easy-to-understand information on the protections this provider offers.

¹⁴ Legal Needs of Individuals in England and Wales, YouGov report jointly commissioned by and undertaken on behalf of The Legal Services Board and The Law Society, 27 January 2020; <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/LSCP-2020-How-consumers-are-choosing-August-2020-1.pdf>

¹⁵ <https://www.sra.org.uk/sra/news/press/2018/price-transparency-digital-badge-confirmed/>

86. Pulling these strands together, rather than looking at further regulation in relation to quality indicators, the CMA should encourage legal regulators to work with the profession to discuss the potential risks and benefits, recognising that the market may continue to evolve naturally and without any mandatory requirements, along with work being undertaken by the Law Society with law firms on how they can consistently demonstrate quality, e.g. Excel and ISO accreditations.
87. We have a residual concern that DCTs may encourage a tendency in consumers to look just at price rather than at quality and service. Reviews may not always be accurate, particularly if problems with, or the merits of, the legal service only become apparent significantly after the transaction. Service quality may also be influenced by the legal outcome, which can pose challenges to a fair evaluation in contentious areas of law. All these are far more complex in comparison to more commoditised services like hotels, utilities and insurance where DCTs work well.
88. Although the Law Society is aware of various risks and challenges relating to the use of digital comparison tools in this context, it continues to adopt a neutral stance on whether members should engage with them (and the benefit they may have for consumers, over and above the other quality indicators already referred to). There is nothing to stop members from engaging with DCTs and some members do so, although many choose not to. If over time this engagement provides advantages for members and consumers, we expect engagement to increase. As such, the market should be allowed to continue to develop on this issue, and to determine the level of usage of quality indicators and digital comparison tools.
89. Regulators should continue to work with the sector to explore the relevant issues associated with identifying the most helpful indicators for consumers, and barriers to DCTs' usage.

Question 7: What impact have ABSs and LawTech had on driving innovation in the legal services sector? Are there any barriers deterring further innovation?

90. We refer to the section on LawTech in our introduction which talked about the significant progress which has taken place in legal services innovation as a result of the development and adoption of legal technology.
91. To enable LawTech and legal services to maintain their industry-leading position in the face of growing competition, market liberalisation and disruption caused by Covid-19, it is essential that flexibility of the legal services sector is maintained in order to navigate the unprecedented challenges that continue to emerge. Best practice must be compiled for the legal services sector, where established legal ethics are front and centre in the design, development, procurement and use of LawTech.
92. Our research showed that the adoption of new technologies could reduce the cost of legal services to UK business users by £350 million by 2030¹⁶, and double productivity growth in the legal sector. And, since every £1 of productivity saving in the legal services sector in 2020 could generate between £3.30 and £3.50 of additional GDP for the UK in 2050, investing in LawTech now will lay the foundations for the UK's long-term prosperity¹⁷.

¹⁶ The Law Society's economic modelling on the contribution of legal technology – analysis available on request.

¹⁷ Contribution of the UK legal services sector to the UK economy, KPMG, commissioned by the Law Society, January 2020. [<https://www.lawsociety.org.uk/topics/research/contribution-of-the-uk-legal-services-sector-to-the-uk-economy-report>]

93. Although some initiatives are underway to develop technology which provides legal services without human involvement, our research suggests that these are in early stages and not widespread. Chatbots, pre-populated contracts and predictive analytics could be considered under this category. Further thought is required on the implications of these for the public interest. In particular such issues as ‘explainability’ of automated decisions, potential bias and impact on privacy need to be considered, as highlighted in our report on the use of algorithms in the criminal justice system.

Barriers deterring further innovation

94. Technology has played an invaluable role in helping many firms to continue serving clients throughout the lockdown. However, poor internet connectivity in rural areas of England and Wales is hampering the efforts of many small local firms to keep their businesses running. As part of our recent campaigns, we have asked the Government to prioritise the rollout of broadband and 5G connectivity to areas with limited coverage at present.

95. Other barriers to innovation and adoption remain. These include limitations due to the partnership model, risks around compliance, and varying levels of awareness and confidence. In the LawTech Adoption Report: Partnership model as a constraint for innovation¹⁸ we are told that “The majority of law firms remain partnerships and money that would be spent on LawTech usually comes direct from the partner profit pool, something that can “create a high bar to adoption”. Partnerships also result in dispersion of responsibility, which can make gaining the support of all partners a very difficult task, particularly when partners close to retirement may be less motivated to invest in the future of the law firm. There have been a number of law firms addressing this issue through stock market floats, with DWF reportedly the latest considering floating on the London Stock Exchange in order to raise money to invest in technology and its Connected Services division.

96. Some LawTech vendors expressed concern on the SRA’s ability to respond at pace to emerging technologies. An example given was on the validity of electronic signatures in corporate deals and private clients matters during lockdown. It is positive that the SRA will play a critical role in the recently announced LawTech Sandbox¹⁹.

Lack of supplementary guidance means greater cost burdens.

97. The technology and legal services sector find it harder to collaborate with one another as each sector lacks an understanding of regulatory and operational considerations made by the other.

98. This extends procurement and due diligence periods and increases associated costs of LawTech Producers and Operators.

99. Larger firms are adopting expensive standards which have not been designed for the legal services sector as they feel this is preferable to operating without them. Small and mid-size firms may not be able to afford procurement costs to identify and offset risks and therefore would not adopt a solution that might increase their competitiveness.

Question 8: Are there other developments which have had or will have a significant impact on competition in the sector?

¹⁸ <https://www.lawsociety.org.uk/topics/research/lawtech-adoption-report/>

¹⁹ Ibid.

100. As indicated earlier in our response, the main developments which have had a significant impact on competition in the sector are the changing regulatory landscape, the Covid-19 pandemic and its impact on the economy, and the rapid development of LawTech. We are not aware of any other significant factors significantly impacting the sector.

Question 9: Are further measures needed to drive consumer engagement and competition in legal services in addition to the areas we have identified above?

101. The legal services market can be a complicated and confusing place for consumers, and without further public legal education, simply increasing the information available to them may not in itself be a complete solution.

102. We would therefore suggest that there is further targeted work which the CMA might recommend on educating consumers on quality and protections within the legal market. We know from the Legal Needs Survey that public awareness on such issues is low. We would suggest that a targeted public legal education campaign covering both quality indicators and the various protections that may or may not be available with different legal services providers would be appropriate.

103. There are many organisations already delivering public legal education, including Advicenow, BPP Law School, and the Citizenship Foundation. The hallmark of successful campaigns has been campaigns that are both targeted and specific. The Law Society would be interested in partnering with a suitable organisation to support how such a campaign could be planned and delivered.

Question 10: Are there any issues specific to the provision of legal services for small businesses that should be considered in order to improve competition for such customers?

104. Our research with members has not focused on SMEs. As such, we would suggest referring to the recent SRA research for specific information on this subject.

Question 11: What measures can be taken to develop a more flexible and proportionate regulatory framework within the Legal Services Act 2007 without requiring any, or only light touch, further legislative change, for example a review of the reserved activities as being considered by the LSB?

105. The current framework, while not perfect, is flexible enough and allows for improvements to be made, if needed.

106. Specifically, regarding concerns over consumer protection shortfalls in relation to unauthorised providers, these could be addressed by using regulatory tools available under the current framework. Under the Act the LSB may recommend to the Lord Chancellor to extend reservation to areas of identified consumer risks. The Act also provides scope for frontline regulators to authorise providers holding other professional titles or operating in the unregulated market to provide reserved activities. For example, in 2018 the Government decided to accept the LSB's recommendation to designate the Chartered Institute of Legal Executives as a licensing authority for the reserved legal activities of the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, and the administration of oaths.

107. In addition, secondary legislation and other measures could also be considered to strengthen existing consumer protection provisions, such as the example of regulating claims management companies, and new proposals to increase consumer protections in the property sector²⁰ and tax advice²¹.
108. However, given that legal services are quite broad in scope, prior to considering any specific measures, work needs to be undertaken to identify specific problems and find workable solutions, which then need to be impact assessed, in order to ensure that regulation is proportionate and does not bring about unintended consequences.
109. The LSB is currently preparing its State of Nation report which could provide some insight about the current conditions of the legal sector and its future challenges, which could inform potential policy interventions.
110. In addition, the LSB is also considering a possible review of reserved activities which could provide an opportunity to gather more data about the scale of the unregulated sector and the extent and nature of consumer detriment it causes.
111. With regard to Professor Mayson's short-term proposals, which include setting up a mandatory public register of unauthorised providers and extending access to the Legal Ombudsman (LeO) for these providers, these need to be properly scrutinised and impact assessed through cost benefit analysis and impact on the sector as a whole. While the register proposal may allow the gathering of data on unauthorised providers and give some limited regulation for the purposes of consumer protection, creating a more level playing field for competition, it also could cause consumers to rely on them to an extent that is not warranted by the extent of the protections, thereby causing detriment to consumers. This would also not resolve the existing problem of consumer confusion. Furthermore, putting a mandatory register with one-size-fits-all regulations applying to unauthorised businesses providing services in hugely diverse areas of legal practice, risks underregulating some areas and overregulating others. This would not be in the consumer and public interest.
112. As for the proposal to extend the Legal Ombudsman's (LeO) jurisdiction to unauthorised providers, this would increase substantially its already stretched resource and workload. As it stands, LeO currently struggles to deal with complaints against regulated providers and already has substantial backlogs in relation to its existing casework. Significant expansion to complaints from unauthorised providers would inevitably require more funding. This would no doubt have a direct impact on regulated professions, with likely implications of rising costs to the profession, currently financing a high proportion of LeO's cost. For example, earlier this year LeO proposed a 20% increase in its annual budget, and if this proposal proceeded, it would likely to have a knock-on effect on the level of practising fees. Given the current hardship faced by many law firms, especially those operating on the high-street and providing vital services to their local communities, these would be highly challenging for firms to absorb, and have possible implications for client fees.
113. In addition, extending access to redress is unlikely to resolve the underlying problems that a lack of regulation causes, in particular for high risk areas (e.g. wills, probate, lasting power of attorney) where redress alone would not be sufficient to address consumer detriment and ex ante protection would be required. For example, in the case of wills or

²⁰ Regulation of Property Agents Working Group chaired by Lord Best. Final Report, July 2019; <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

²¹ <https://www.gov.uk/government/consultations/call-for-evidence-raising-standards-in-the-tax-advice-market>

lasting power of attorney, low quality of service usually becomes apparent a long time after the service is delivered, in most cases after a client has passed away, when it is too late to remedy the detriment.

114. The LSB, as an oversight regulator that provides challenge and support to the LeO, is aware of acute challenges the ombudsman is currently facing and as such is well placed to provide further insight.
115. In addition, where evidence suggests there is still significant room for improvement, one of the possible light touch interventions which could be considered is in the area of low public legal literacy and confidence. The Legal Needs survey shows that 36% of people have low legal public confidence, which impedes their ability to obtain professional help, with over half of them (54%) not getting such help.²² Many people do not understand how and when they should take legal advice from a qualified solicitor or other regulated professional and/or are not aware that they are eligible for Legal Aid. Making people aware of how to recognise legal issues and from whom to seek help could increase people's access to justice, distinguish between providers and reduce unmet demand. The LSB is planning to develop work in this area which we support. Also, better signposting and referring people to the right source of help at the right time when advice is needed could help.

Question 12: Would such measures above be sufficient to deliver effective change that can promote competition and optimise consumer outcomes in the longer term?

116. As highlighted earlier, the Legal Services Act is flexible enough to allow for improvements to be made. Once specific problems are identified and appropriate interventions agreed and acted upon, these should be reviewed once implemented to assess impact.
117. At this stage, when there are some measures proposed but with limited scrutiny and impact assessment it is difficult to stipulate what the longer-term outcome would be.
118. It is also important to recognise that given the pivotal role of the rule of law in the economy and the whole of society, any agreed measures should not only focus on competition outcomes, but also on the need to safeguard other regulatory objectives under the Legal Services Act²³.
119. Proportionate regulation must be balanced with the need to ensure appropriate levels of consumer protections and protection of the public interest. For example, we raised concerns with the LSB and SRA about the weakening of consumer protections that accompanied the SRA Handbook changes aimed at removing barriers to competition (such as the removal of mandatory insurance, access to the Compensation Fund and other important safeguards, impacting in particular on vulnerable clients).
120. Promoting selected objectives at the expense of others can bring unintended consequences and undermine public trust in the legal system and the rule of law.

²² Legal Needs of Individuals in England and Wales, YouGov report jointly commissioned by and undertaken on behalf of The Legal Services Board and The Law Society, 27 January 2020.

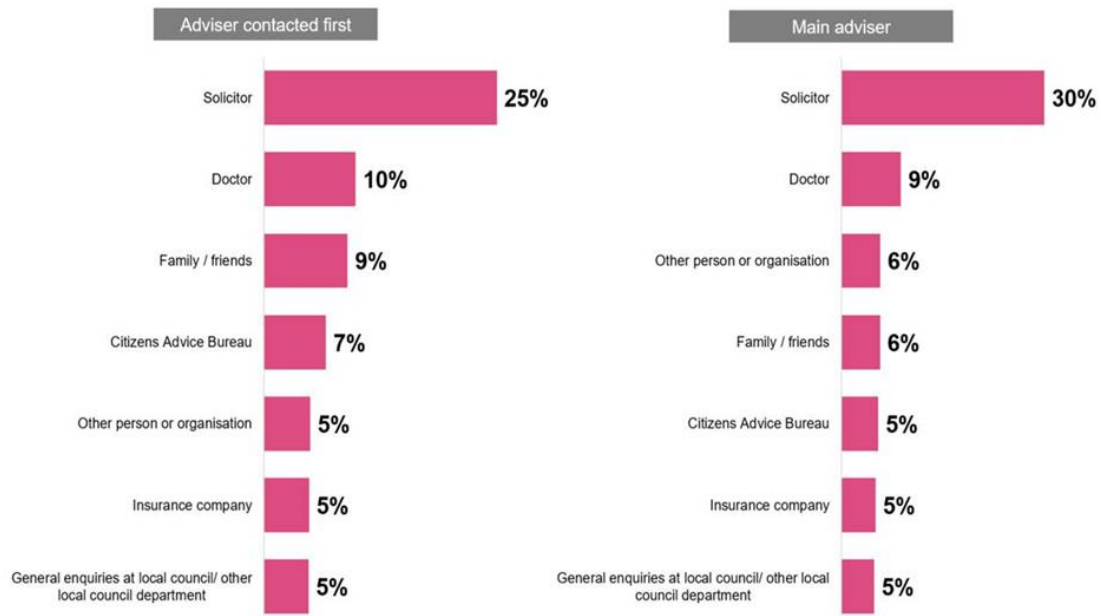
²³ <https://www.legislation.gov.uk/ukpga/2007/29/contents>

Question 13: To what extent is there merit in extending the regulatory framework to include unauthorised providers? What evidence is there of consumer detriment from unregulated providers, or other rationale, to warrant this?

121. Unauthorised legal providers encompass a diverse group of service-providers, ranging from not-for-profit organisations to paid advisers and businesses operating on a commercial basis. Many not-for-profit organisations such as law centres, Citizens Advice and other charities provide vital services and legal advice free of charge. Some of the providers are regulated to a varying degree by sector specific regulation (e.g. immigration services, insolvency, claims management). Others are subject to self-regulation and apply voluntary regulation and codes of conduct to their members. Following the SRA's handbook reform and relaxation of practising rules, some solicitors may also be working for unregulated providers either in the commercial or not-for-profit sector, offering advice to clients.
122. There is limited information about the market share of unregulated legal providers operating in the legal services market or the scale of potential consumer detriment. The split between consumer and business to business legal services by unregulated providers is also unclear.
123. According to the LSB's most recent estimate²⁴ (June 2020), unregulated providers account for around 1% of paid advice in the legal services market, although the market share may be higher for some segments.
124. The Legal Needs Survey shows that most people seek advice from regulated professions, doctors, family and friends, and relevant organisations, with only few using unauthorised providers. Of the 66% who sought advice, the majority sought advice from a solicitor. The survey indicates that for many legal issues, consumers make a rational decision not to seek legal advice from regulated professions, and are able to resolve problems by themselves or with the help of family. The survey also shows that the majority of the problems, for which consumers do not seek professional advice, relate to consumer issues. We note that for these areas, the current consumer protection framework already provides and encourages easily accessible and low-cost mechanisms, whereby seeking remedies through courts is considered as the last resort. It is also important to acknowledge that there is no evidence that those who do not seek any help at all are at risk of harm from unauthorised providers.

²⁴ <https://www.legalservicesboard.org.uk/news/chairs-blog-june-2020>

Sources of help people contact first and who they consider to be their main adviser when handling a contentious or non-contentious legal issue²⁵



125. Given limited insight on unauthorised providers in general, it is difficult to estimate robustly potential consumer risks and the level of detriment.

126. The Legal Needs survey²⁶ found that consumer satisfaction was much higher from using professional help (with solicitors scoring the highest – 90% satisfied) in comparison to other providers. Unauthorised providers received the worst ratings, with one in five people dissatisfied with the service they received from sources including will-writers and McKenzie Friends.

127. It is true that the current regulatory framework provides consumers with a different level of protections depending on the type of provider they use. Clients using regulated professions are provided with a high level of consumer protections, whereas those seeking services from unauthorised providers are afforded less protections in comparison. For example, solicitors have professional obligations actively enforced by a regulator relating to legal professional privilege and confidentiality, accountability to the court, payment for professional indemnity insurance and to the Compensation Fund and the Legal Ombudsman²⁷. On the other hand, clients using unregulated providers have to rely on the basic consumer law, even when they procure legal services that carry significant levels of risk such as will-writing and contentious areas. However, at the time when the Act was introduced the risk was considered to be one worth taking in a balancing exercise with the burden of regulation.

²⁵ Legal Needs of Individuals in England and Wales, YouGov report jointly commissioned by and undertaken on behalf of The Legal Services Board and The Law Society, 27 January 2020

²⁶ Ibid.

²⁷ With the introduction of the new SRA Standards and Regulations these protections will apply to solicitors working in the SRA regulated entities, but may not to solicitors working in unauthorised firms and freelance solicitors delivering non-reserved activities.

128. While the level of consumer satisfaction and protections vary, and some risks may exist, it is not clear to what extent these translate into consumer harm. We note the CMA found little evidence of poor quality of service or breaches of consumer laws by unauthorised providers.²⁸
129. Therefore, prior to considering concrete solutions, we recommend a robust review of unauthorised providers, to better understand and identify the providers, what specific legal services they provide, what are the concrete consumer risks and the level of consumer harm as well as future trends.
130. The CMA 2016 market study recommended to gather more evidence on unauthorised providers in the legal sector, and we are supportive of this proposal. This would allow for more insight on the unregulated part of the legal services market. We are not aware that any such data gathering has taken place in any comprehensive way since the CMA 2016 study.
131. The evidence gathering exercise should also collect more robust insight on the existing consumer protections, available redress mechanisms and self-regulatory schemes. This is particularly important given that the scope of legal services is quite broad, as indicated by the Legal Needs Survey, and some sector specific regulations may exist alongside voluntary arrangements. This would help to prevent regulatory duplication which could have a knock-on effect on the overall cost of providing such services and potentially limiting access to justice.
132. For example, there are sector specific regulations which apply to unregulated providers for certain areas of practice e.g. immigration services, insolvency or claims management services.
133. The Alternative Dispute Resolution Regulations 2015 also ensure that redress mechanisms are in place for unregulated legal services providers should they choose to use them. For example, the Trading Standards run the Consumer Codes Approval Scheme which can be rolled out to any market sector, including unauthorised legal providers. The Institute of Professional Will Writers (IPWW) has been a member of the scheme since 2014.
134. In addition, some unregulated providers are subject to self-regulation, which offers consumers more enhanced protections. For example, the Institute for Professional Will Writers, the Society of Will Writers and the Society of Trust and Estates Practitioners, the National Association of Licensed Paralegals or the Professional Paralegal Register apply voluntary regulation to their members and operate codes of conduct that their members must comply with.
135. If the data collection exercise takes place and concludes that there is compelling evidence of the public and consumer harm from the unregulated sector, consideration should be given to bringing within the scope of regulation some of the non-reserved activities and unauthorised businesses.
136. For example, the Law Society supported the LSB's proposal to include wills in the scope of reserved activities. In addition, other high-risk areas involving handling clients' money could be considered, such as lasting power of attorney, estate administration,

²⁸ The Legal Services Market Study, CMA, December 2016; pages 11-12.

trusts, insolvency²⁹ and personal injury. Lord Best's report into regulating property agents also recommends creating a list of reserved activities in the property market, which can only be performed by licensed agents in regulated firms to protect consumers.³⁰

137. Secondary legislation could also be used, as was the case with claims management companies which were brought within the regulatory remit of the Financial Conduct Authority.

138. Specifically, with regard to concerns about potential consumer detriment arising from the growing LawTech, while LawTech is still evolving, there are several challenges regulators and academics must address in their work, particularly on risk-based models of regulation, prior to considering regulatory solutions. As LawTech is based on a constant process of innovation and firms continue to adopt solutions in different ways, it is very difficult to provide an objective risk analysis. Many LawTech products do not fit neatly in the current user/applications of a firms, thereby risks are unknown by nature. A blanket risk-based model of regulation which covers LawTech would stand to reduce competition in the legal services sector.

139. Any form of regulation, if needed in the public interest, must be carefully calibrated to enable the UK legal services to maintain its global leading position, as well as to avoid adversely impacting our strong and emerging LawTech sector thus creating an unintentional advantage in favour of foreign competitors. We support the initiatives of the UK LawTech delivery group in this space and engage closely with the LSB and the SRA in this area of work.

Question 14: We recommended a review of the independence of regulators both from the profession and from government, to the MoJ in the CMA market study. Is that review still merited, taking into account, for example, the work that has been undertaken by the LSB on IGRs and the arguments put forward by the IRLSR?

140. The CMA 2016 market study noted that the regulatory framework 'needs to be independent both from the government and the profession' and that concerns had been raised about the current arrangements 'failing to ensure that frontline regulators can operate free from the influence of their representative bodies'.

Independence from the government

141. The Law Society remains of the view, as set out in our response to the 2016 study, that it is imperative that the profession, and the regulation of the profession, remain independent from the government to ensure confidence in the justice system of England and Wales, both domestically and abroad, and to protect individual, and broader, consumer interests. In our view no change is merited to this position.

142. We note in this context what is said by Professor Mayson on page 279 of the IRLSR report: "The present arrangement under which appointments to the Legal Services Board, as well as certain designated decisions, are made or approved by the Ministry of Justice, gives rise to understandable perceptions from international observers and consumers that the regulatory structure in England & Wales is a creature of government and therefore that

²⁹ A case study is provided by the Insolvency Service report from 2018 on provision in the IVA market.

³⁰ Regulation of Property Agents Working Group chaired by Lord Best. Final Report, July 2019; <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

lawyers are not truly independent from the state. Such perceptions are important in the context of the rule of law, given that independent legal challenge of government may be required to ensure that government itself acts within the law.”³¹ We do not consider that the LSB³² and Professor Mayson's vision, shared by the CMA in its report on the Scottish legal services market³³, that there be a single legal services regulator answerable to Parliament, would address these concerns in any way.

Independence from the profession

143. The introduction of the IGRs and accompanying statutory guidance, and the recent measures which regulatory bodies and approved regulators have implemented to certify compliance with the IGRs as of July this year, have had the effect of delivering increased independence and autonomy between approved regulators and regulatory bodies, compared to the position considered by the CMA market study in 2016.

144. Following recent changes to the LSB's Regulatory Performance Framework, the LSB will also be actively monitoring regulatory independence in compliance with the IGRs. The Regulatory Performance Framework has now been extended to include assurance from approved regulators and regulatory bodies in relation to the independent delegation of regulatory functions and the performance of the approved regulator's limited assurance role. In view of these significant changes to the wider regulatory framework to ensure appropriate separation and independence of regulatory bodies, the Society considers that a further MoJ review of the independence of regulators from the profession is not warranted at this time.

Question 15: What work has been undertaken by regulators to reduce the regulatory burden on providers of legal services for individual consumers and small businesses? What impact has this had?

145. Considering that the new rules were introduced only last year, with a period of a significant disruption caused by Covid-19, and some are yet to be implemented (e.g. changes to the Compensation Fund and SQE), it would be premature to assess the impact of these changes on the legal profession, consumers and the wider legal services market. We expect the impact of these reforms to be more visible as the changes properly bed in.

146. When the SRA consulted on the handbook reform we were concerned that the high-level codes with less prescriptive rules may lead to compliance challenges, especially in relation to 'grey' areas, open to interpretation. These could have had a disproportional impact on sole practitioners and small firms, which make up a high proportion of firms and often serving the most vulnerable clients. Usually regulatory costs are more difficult for small firms to absorb because small firms do not have the compliance resources of large firms. We also raised concerns over potential impact on equality and diversity of the profession, since a large proportion of BAME solicitors work in those firms. We therefore asked the SRA and the LSB to robustly assess the regulatory changes through their impact on different segments of practitioners and firms, and their clients.

147. Since then we have worked closely with the SRA to address some of the challenges, provide more clarity about the new rules and help law firms and practitioners with compliance.

³¹ Reforming Legal Services – Regulation beyond echo chambers, IRLSR final report, Professor Stephen Mayson, June 2020.

³² A vision for legislative reform of the regulatory framework for legal services in England and Wales, the Legal Services Board, September 2016

³³ : Legal Services in Scotland, Research Report, CMA, March 2020

148. The recent Covid-19 pandemic has tested the new regulations to some extent, and has shown, that the new regulatory framework for solicitors provides sufficient flexibility to adapt to novel situations whilst protecting the public, facilitating regulatory oversight and compliance, and allowing innovation.
149. Covid-19 resulted in changes to ways of working for many law firms and practitioners, and at the early stage of the pandemic our members expressed concerns over clarity about regulatory and compliance obligations, whether with regard to client confidentiality obligations for home working staff, or anti-money laundering checks of clients. However, these were resolved without the need to amend the existing regulation.
150. While the handbook reform aimed to alleviate some of the regulatory burdens, the changes bore short-term compliance costs for law firms associated with adjusting from an old set of rules to the new ones. In addition, as evidenced earlier, the transparency remedies have increased regulatory pressures and compliance challenges for many firms. Therefore, all of these need to be considered when evaluating the overall impact of the CMA recommendations on providers of legal services, consumers and small businesses.
151. It is also important to recognise that on top of the professional obligations set up by the SRA solicitors need to comply with wider regulatory changes which can increase cost. For example, anti-money laundering remains a major compliance focus for solicitors' firms, and many practitioners are currently making plans in response to the challenge of the UK withdrawal from the European Union. Firms are also faced with additional pressures to adapt quickly to the current challenging market conditions as the result of Covid-19.
152. We envisage the cumulative effect of these on law firms and clients is likely to be seen only several years after. Therefore, the recent regulatory reforms and wider market changes will need to be robustly monitored and assessed prior to contemplating any more change.
153. Constant regulatory change has an economic impact, as firms and solicitors adjust to and implement the requirements. This in turn can have knock-on effects on clients who are likely to bear the cost of regulatory compliance. Given the current significant uncertainty over the working environment and future economic climate, regulatory stability and certainty will be critical to firms' ability to adapt and serve the public. This reflects the Law Society's recent member survey which found that that in the current exceptional circumstances, there is increased demand from law firms to develop new 'best practice' and to clarify existing regulatory requirements rather than create new regulations.

Question 16: What impact has the removal of restrictions to allow solicitors to practise in unauthorised firms had on the availability of lower cost options in the sector?

154. The change to allow solicitors to practice in unauthorised firms has come into force only recently. Therefore, it is too early to assess its full effect, but in the long-term it might lower operational cost for business, potentially leading to more competition in the market, which could drive costs down for consumers. For example, an accountancy firm could expand its business to offer legal services to clients without the need to be authorised as an Alternative Business Structure which can reduce costs. Similarly, a firm that offers HR services to businesses, which employs in-house solicitors, may use these solicitors to deliver these services directly to clients, without the need to seek waivers from the SRA or insurance, which can again lower regulatory burden and cost, but at the expense of client protections.

155. The SRA handbook reform also led to the introduction of the freelance model, which eased regulatory restrictions on solicitors practising on their own, by either lowering the cost of PII (for reserved work) or removing PII altogether (for non-reserved work), which potentially could reduce cost options, though by lowering consumer protections. Since the model was introduced, we have received a lot of enquiries mainly from sole practitioners, consultants attached to law firms, and semi-retired solicitors, looking to switch to freelancing in order to reduce their insurance cost. Interest is on the rise since the beginning of the pandemic. However, when last we checked with the SRA, fewer than 100 had registered.
156. We understand that one of the barriers is the lack of competitive insurance products available on the market. For example, the insurance products which would meet the SRA's 'adequate and appropriate' insurance requirements are either not readily available or premiums are priced at around the same level as the SRA's mandatory insurance for sole practitioners but offer substantially less cover. The Law Society had discussions with insurers and brokers about making such products available for freelance solicitors, but at present they are especially risk averse, and a hard market means that there is reduced capacity for PII across all sectors. Possibly, with an increased demand for insurance for freelance solicitors and the return of more favourable market conditions, more products will be offered.
157. Another impediment, especially to sole practitioners who might want to switch to working on freelance basis, is the cost of closing down their practice, and the requirement to purchase six years' mandatory run-off cover. The average cost of run-off cover for a sole practice was around £21,600, according to the Law Society's most recent PII Survey, but that was during a soft market in 2018; the costs will have increased significantly since then.